

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARVEL CHARACTERS, INC.,  
Plaintiff and Counterclaim-Defendant,

v.

LAWRENCE D. LIEBER,  
Defendant and Counterclaimant.

Case No.: 1:21-cv-7955-LAK  
and consolidated cases  
21-cv-7957-LAK and 21-cv-7959-LAK

Hon. Lewis A. Kaplan

**DECLARATION OF ROY THOMAS IN  
SUPPORT OF MARVEL CHARACTERS  
INC'S MOTION FOR SUMMARY  
JUDGMENT**

MARVEL CHARACTERS, INC.,  
Plaintiff and Counterclaim-Defendant,

v.

KEITH A. DETTWILER, in his capacity as  
Executor of the Estate of Donald L. Heck,  
Defendant and Counterclaimant.

MARVEL CHARACTERS, INC.,  
Plaintiff and Counterclaim-Defendant,

v.

PATRICK S. DITKO, in his capacity as  
Administrator of the Estate of Stephen J.  
Ditko,

Defendant and Counterclaimant.

I, Roy Thomas, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I submit this declaration based on my personal knowledge as set forth herein and, if called and sworn as a witness, I could and would testify competently thereto.

2. I make this declaration to affirm, supplement and expand upon my January 20, 2023 deposition in this matter, as well as testimony that I've provided previously in other matters, including *Marvel Worldwide, Inc. v. Kirby et al.*, No. 10-141 (S.D.N.Y.).

3. I have been involved in the comic industry for the last sixty or so years.

4. In 1961, in collaboration with my late colleague Jerry Bails, I co-founded and co-edited *Alter Ego*, a “fanzine” devoted to comic book news and culture. *Alter Ego* featured editorials, articles, and interviews alongside contemporaneous creative and artistic contributions from industry professionals such as Jack Kirby and Steve Ditko.

5. In July 1965, Stan Lee—then the editor-in-chief—hired me as a staff writer for Marvel Comics (“Marvel”). After joining Marvel, I quickly transitioned to editorial work, working first as an editorial assistant to Stan Lee and then as an assistant editor beginning in early 1967. When Stan Lee became Marvel’s publisher in 1972, I was promoted as editor-in-chief and served in that role until late 1974. I remained at Marvel through 1980 as an editor and writer. Since then, I have, on occasion, continued to write for Marvel on a freelance basis.

6. I am currently the editor of TwoMorrows Publications’ *Alter Ego* magazine, which, like the original, features information perspectives from across the comic book industry, focusing on the 1930s through the 1970s. Over the years, *Alter Ego* has published many features on Ditko’s work for Marvel.

7. When I joined Marvel in July of 1965, I understood that Marvel had an established framework that everyone worked within dating back at least as far as 1961 with the dawn of the

“Marvel Age of Comics.”<sup>1</sup> I am aware of this both through my own study of Marvel with *Alter Ego* prior to joining Marvel, through conversations at Marvel after joining, by the established method of creating comics at Marvel when I joined, and through retrospective interviews for publication in the revival *Alter Ego*.

8. As part of that established framework, Stan Lee supervised and directed Marvel’s comic book-creation process subject only to Martin Goodman, Marvel’s then-publisher, who was the ultimate decision-maker until he stepped down as publisher in or around 1972.

9. With the assistance of Marvel’s staff—including production managers and editors (including me)—Lee originated ideas for comics and characters, assigned freelancer writers and artists to work on specific comics, reviewed and edited submitted assignments (requesting or making changes as he saw fit), and ushered material through the office to ensure that Marvel’s comics were finalized, printed, and on shelves in a timely manner.

10. Steve Ditko was one of Marvel’s freelance artists when I joined Marvel. I had the pleasure of working with him at Marvel, including dialoguing two Doctor Strange stories that he worked on.

11. I was also familiar with Steve Ditko’s work for Marvel (and others) even before I had the chance to work with him. As an avid reader of comics and editor of *Alter Ego*, I followed his work on Marvel titles such as *Strange Tales*, *Tales to Astonish*, *Tales of Suspense*, and *Journey into Mystery*.

12. I am aware that, following his first contribution to Marvel’s *Strange Tales* in 1956, Ditko was a regular contributor to the series in 1959 beginning with issue 67 (cover-dated February

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<sup>1</sup> As I explained in “The Marvel Age of Comics:1961-1978,” a section in my 2014 historical retrospective of Marvel entitled *75 Years of Marvel* (2014), the Marvel Age of Comics began in 1961 with the launch of Marvel’s superhero line of comics.

1959). *Strange Tales* was an anthology series of short stories, generally bookended by a lengthier Jack Kirby-drawn monster story at the front and a shorter Steve Ditko-drawn surrealistic story at the end.

13. Beginning with issue 91 (cover-dated December 1961), *Strange Tales* comics featured five-page “back-up” features written by Stan Lee and drawn by Steve Ditko, such as issue 110’s “Dr. Strange: Master of Black Magic!,” which was published without a backstory for the titular character.

14. Similarly, Ditko also worked on Marvel’s *Amazing Adventures* series, providing artwork for the sort of short, surrealistic stories that he did with Lee on *Strange Tales*, including the inking on a short story in issue 1 entitled “I Am The Fantastic Dr. Droom!”.

15. As I previously noted in my Marvel retrospective, *75 Years of Marvel Comics*, “when Lee and Ditko gave Dr. Strange an origin in *Strange Tales* No. 115, it bore a distinct similarity to that of Lee and Kirby’s Dr. Droom in *Amazing Adventures* No. 1, two years earlier.” Both characters were magicians sharing the same backstory: doctors that travel to Tibet, undergo a series of tests, and develop mystical abilities to combat magical forces.

16. During the early 1960s, I understood that Steve Ditko was performing most, if not all, of his work for Marvel. In fact, with the exception of occasional one-off assignments from smaller publishers, I am not aware of Ditko doing any work for other companies besides Marvel from 1963 to 1965.

17. When I began working at Marvel in July 1965, I observed first-hand how busy Lee kept Ditko, as Ditko juggled work on *Strange Tales* and *The Amazing Spider-Man*.

18. While Ditko ultimately left Marvel in late 1965, comic books featuring his contributions were published into 1966 due to the lag between the completion of a comic book and

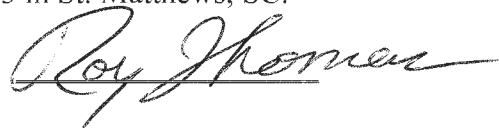
when it was printed and placed on newsstand shelves.

19. Ditko later returned to Marvel in 1979 and continued to freelance for Marvel until departing again in the 1990s to pursue self-publishing and other personal projects.

20. During the 1960s (including the relevant years 1962 to 1965), Marvel paid for all freelance work on a per-page basis. For example, if Lee assigned a freelancer to pencil five pages of artwork for a particular comic, the freelancer would be paid his or her per-page rate for each of the five pages. In certain circumstances, Marvel would ask that freelancers make changes or edits to their submitted pages. In these instances, the freelancer would not be paid double the page rate—that is, the freelancer would not be paid both for the originally submitted page and the page reflecting Marvel’s requested revision(s). Put differently, Marvel’s per-page rate included the right to ask the freelancer to make revisions. In rare instances, Marvel would pay the freelancer for pages but decide not to publish them.

21. I am not aware of any instances where Marvel outright “rejected” and refused to pay for work that it assigned to Steve Ditko. This never happened to me, and it would be especially surprising for it to happen to Ditko given his status at Marvel as a very talented and valued freelancer. More generally, I am not aware of any instance where Marvel “rejected” and refused to pay for work that it assigned to any freelancer where the freelancer turned the assignment in on or before the deadline set by Marvel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and was executed on May 17, 2023 in St. Matthews, SC.

By:   
Roy Thomas